I. Introduction

This Tax Division Judgment Collection Manual sets forth the Tax Division's collection policies, explains the laws authorizing enforced judgment collection, and furnishes trial attorneys with suggestions as to how to collect tax judgments. Neither the legal discussions nor the suggestions are intended to be exhaustive, but merely serve as a guide for trial attorneys' collection activities.

Collection of judgments is an essential part of the Tax Division's work. It requires imagination, perseverance, and skill in using federal tax lien and levy law, postjudgment discovery, judicial sale procedures, the Federal Debt Collection Procedures Act, and state judgment execution laws. When a judgment is obtained, the trial attorney must ensure that the collection steps outlined are promptly pursued.

Certain initial steps must be taken in every case, such as sending demand letters, and obtaining financial information. Nonetheless, each case is different and must be evaluated individually to determine its collection potential and the further collection steps that are appropriate.

Delay in attempting to collect greatly reduces the likelihood of collection. Thus, collection should be pursued promptly, as well as vigorously, uniformly, and fairly. Collection of amounts owed pursuant to a settlement, especially in the early stages, should be monitored carefully. If default occurs, appropriate action to enforce collection should be taken promptly.

In most cases, the trial attorney should complete the initial collection efforts within nine months after entry of a judgment. After initial efforts have been completed, the trial attorney and section chief or assistant chief should decide whether the case should be retained by the Tax Division or be referred to the IRS (or United States Attorney).

In deciding whether to retain or refer a judgment after initial collection efforts are completed, it may be helpful to classify cases into two categories. First, in many of our collection cases, taxes have been assessed and the IRS has attempted to effect collection by levy. The IRS can use its levy power for as long as ten years before referring a case to the Tax Division for suit. Often, the sole reason the IRS refers a suit is a determination by the IRS that judicial foreclosure of the tax lien on identified property of the taxpayer will bring a better return than a sale pursuant to levy. Aside from the sale of that property, little chance of collection may exist. Cases in this category are often prime candidates for referral to the IRS for monitoring as soon as the uncollectibility of the judgment is confirmed. A case cannot be transferred as uncollectible, however, simply because the taxpayer or the taxpayer's lawyer represents that the taxpayer has no assets or income. Rather, the determination of uncollectibility must be made independently by either the IRS or the Tax Division.

In a sizeable number of cases, however, administrative remedies[1] either were not available to or were not exhausted by the IRS. For example, liabilities for failure to honor a levy and liabilities under Internal Revenue Code § 3505 are not assessed and thus cannot be the subject of a pre-suit levy. Also, in trust fund recovery penalty refund suits and other partial payment refund cases involving divisible assessments in which we file counterclaims, the IRS traditionally has deferred collection during the pendency of the litigation. The IRS may not have worked these cases thoroughly from a collection standpoint, and many of the cases have substantial collection potential.

If initial investigation or discovery of a taxpayer's income and assets reveals collection potential, a case should be retained by the Tax Division for collection work beyond the initial steps that must be taken in all cases.

Attorneys in private practice evaluate the collection potential of a case even before suit is brought and continue to consider collectibility during all stages of the pendency of the case and prior to obtaining a judgment. Tax Division attorneys should likewise begin at an early stage to develop a collection strategy for each case.

Collection of a judgment is the responsibility of the trial attorney assigned to the case, but the attorney should seek the assistance of a paralegal. The paralegal, in assisting the trial attorney, should have access to the trial attorney's file, the DJ

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[1] As used in this Manual, the terms "administrative remedies" or "administrative collection" refer to the collection actions that the I.R.C. authorizes <u>the IRS</u> to take after a tax has been assessed. Administrative collection may be pursued without first obtaining a judgment in a court (although it can also be pursued after entry of judgment). In contrast, authority for the collection actions that <u>the Tax Division</u> may take arises from the Government's status as a judgment creditor, and is based on provisions in the Judicial Code (28 U.S.C.) and the Fed. R. Civ. P.

file, and the administrative file. The administrative file should not be retained unless it bears on collection; but in any event, the paralegal should assure that copies of the following are retained:

1. the judgment debtor's income tax returns;

2. the transcript of account and/or certificate of assessments and payments; and

3. any financial statement, letter, memorandum, or investigation report describing the judgment debtor's financial condition or property holdings.

Paralegals are particularly helpful with some of the more routine collection tasks such as initial demand letters and initial collection interrogatories. Even these tasks, however, require some attention by the trial attorney. Trial attorneys must recognize that successful judgment collection will require substantial amounts of the trial attorney's time and attention, and that a paralegal is most effective when working closely with a trial attorney who is knowledgeable about the case.

Every effort should be made to collect a judgment or to determine that it is uncollectible within nine months after a judgment has been entered. Nevertheless, this process may take substantially more or less than nine months depending on the circumstances of a particular case. This Manual lists a series of steps to be undertaken to collect judgments or to ascertain whether judgments are uncollectible. Initial collection activity is not completed until these steps have been taken. After the Tax Division's initial collection effort has been completed, if the judgment remains unsatisfied the trial section should determine whether the case should be retained by the Tax Division for further collection efforts or closed in the Division with the judgment referred to the IRS or to the United States Attorney. The steps necessary to transfer a judgment to the IRS or the United States Attorney are set forth, pp. 62-64, *infra*.

As explained in Part IV, *infra*, it is essential that collection and payment activities conducted by trial attorneys and paralegals be promptly and accurately reported on the Tax Division's "Attorney Activity Reporting Form" (sometimes referred to as an "IBM card"). Additionally, paralegal and attorney time spent on collection matters should be reported in the "Collection Activities" column on the Tax Division timesheet. These procedures enable the Division to keep track of the status of outstanding judgments and the amount of attorney and paralegal time devoted to judgment collection work.

In sum, upon obtaining a judgment, a trial attorney and paralegal should promptly and vigorously pursue collection efforts. In approximately nine months, once initial collection steps have been taken, they should evaluate the situation and should decide in consultation with the section chief or assistant chief what further steps should be taken.